

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA DAVIS)	
Claimant)	
VS.)	
)	Docket No. 173,643
JOSTENS PRINTING & PUBLISHING)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Brad E. Avery on December 10, 1998. The Appeals Board heard oral argument September 21, 1999.

APPEARANCES

Roger D. Fincher of Topeka, Kansas, appeared on behalf of claimant. Bret C. Owen of Topeka, Kansas, appeared on behalf of respondent and its insurance carrier. Jeff K. Cooper of Topeka, Kansas, appeared on behalf of the Fund.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found claimant failed to prove accidental injury arising out of and in the course of employment and, on that basis, denied benefits.

The issues on appeal are:

1. Did claimant prove accidental injury arising out of and in the course of her employment?
2. If the Board finds claimant did prove a compensable injury, the parties ask that the Board determine the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

Findings of Fact

Claimant began seasonal work as a typist for respondent in December 1990. The season generally ended in July. Claimant returned in 1991 and in November 1992 returned for her third season. According to claimant, she started having problems with her hands in February 1991, the first season, but did not report the problems at that time. Claimant testified she did discuss the problems with her supervisor in the second season but did not request medical treatment. In January 1993, claimant asked for medical treatment. Claimant testified that at that time the pain was excruciating and her hands were swollen. Claimant last worked for respondent on January 25, 1993, and was referred for medical treatment, initially authorized by respondent.

Claimant received physical therapy through Rhonda Flanagan. She saw claimant January 22, 1993, and gave her therapy for several months. She observed swelling in claimant's hands and some loss of motion. The range of motion fluctuated but generally improved during therapy. The swelling remained.

After seeing several physicians and a presumptive diagnosis of reflex sympathetic dystrophy, respondent referred claimant to Dr. William O. Reed, Jr. Dr. Reed saw claimant on June 15, 1993. Dr. Reed reviewed records of the prior treatment. His report comments on negative MRI and CT studies and describes a history of unsuccessful attempts to treat claimant. Dr. Reed's examination produced essentially normal findings. He reviewed previous EMG testing and concluded it did not suggest evolving carpal tunnel. Based on his examination and review of the records, Dr. Reed concluded claimant does not have reflex sympathetic dystrophy. He recommends that further treatment be discontinued to avoid associated risks. He also concluded claimant does not have carpal tunnel syndrome or other peripheral neuropathy in the upper extremity. In conclusion, he found claimant is most likely suffering from gross symptom magnification or conversion reaction. In his deposition testimony, Dr. Reed described a conversion reaction as a stressful situation

manifested in physical complaints when in fact there is no physical illness. He concluded there was no evidence of a physical injury resulting from claimant's work for respondent.

Respondent provided the initial medical treatment and paid some temporary total disability benefits but, based on Dr. Reed's opinions, terminated the benefits. Claimant applied for a preliminary hearing and from that hearing the Administrative Law Judge appointed Dr. P. Brent Koprivica to conduct an independent examination.

Dr. Koprivica saw claimant December 27, 1993. Dr. Koprivica also concluded there was no evidence that claimant sustained any permanent physical injury as a result of her employment for respondent. Claimant presented to Dr. Koprivica with diffuse chronic pain involving her upper extremities but normal objective testing. Dr. Koprivica noted two negative EMGs and a negative bone scan. He considered her presentation on testing of grip strength to be nonphysiologic. Her two-point testing did not correlate with objective testing. He described her physical presentation in general as nonphysiologic and contrary to the objective data. In his opinion, her condition was psychological. He does not suggest the psychological condition is traceable to a physical injury. Dr. Koprivica later reviewed additional medical records, including records of testing by Dr. Lynn D. Ketchum, and stated that nothing in those records changed his initial opinions.

Dr. Wade B. Welch also testified in this case. He saw claimant September 28, 1993, and again on October 11, 1993. Dr. Welch is board certified in neurology and clinical neurophysiology. He saw her for episodes of loss of consciousness and quadriparesis. He performed a battery of tests, including EMG and MRI, which were both normal. He also did a complete neurological examination. His impression was:

History of varied and dramatic neurologic symptoms including alteration in consciousness in times leading to syncope with convulsive activity, quadriparesis and weakness without detectable organic basis on exam or laboratory. Suspect psychogenic basis. Jaw pain with chewing. Possible TMJ.

Finally, claimant saw Dr. Ketchum in October 1995. Claimant presented with a history of pain in both hands from working for respondent. Dr. Ketchum diagnosed bilateral flexor tenosynovitis, bilateral carpal tunnel syndrome, bilateral compressive neuropathy of the ulnar nerves at the wrists, de Quervain's disease of the right wrist, and stenosing flexor tenosynovitis of the right middle finger. But Dr. Ketchum also testified that all of the conditions he diagnosed are ones he would expect to improve if claimant was not working. He also agreed that it would not be consistent with injury at work if she had a negative nerve conduction study after she quit working and then six months later, while still not working, had a positive nerve conduction study.

Claimant was seen by Dr. Harold Voth, a psychiatrist. Dr. Voth was not able to make a judgement about physical or psychological causes, but he did not believe she was faking the symptoms.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).
2. The records from the initial treating physicians are not in evidence. They were introduced at the preliminary hearing but the physicians did not testify and the parties did not stipulate to their admission. K.S.A. 44-519.
3. The Board concludes claimant has not proven by a preponderance of the credible evidence that she sustained injury arising out of and in the course of her employment. Both Dr. Reed and Dr. Koprivica concluded she suffered no physical injury from her work. Both saw claimant after the physical therapy by Ms. Flanagan. Dr. Ketchum's contrary opinion is less convincing because of the length of time between the alleged injury and the date of his examination. Dr. Ketchum also acknowledged the evolution of the alleged injury was not what you would expect for someone who was not working for a substantial period, in claimant's case almost three years.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on December 10, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Bret C. Owen, Topeka, KS
Jeff K. Cooper, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director